IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5639 OF 2007

Smt. Seema Narayan Divekar .... Petitioner

Vs.

Shri Krishnan Gopi .... Respondent

Mr. R.A. Thorat & Mr. P.J. Thorat for Petitioner.
Mr. K.S. Dewal for Respondent

CORAM : A.P. DESHPANDE, J.
DATE : 17TH OCTOBER, 2007

P.C.

1) Rejection of an application moved by the defendant for amendment of written statement in a pending suit has given rise to the filing of this petition.

2) The respondent is the landlord who had leased out an open plot of land in favour of the petitioner and an agreement of lease was executed between the parties. The respondent after termination of the lease by serving a notice u/s 106 of the Transfer of Property Act, 1882 instituted the suit. The respondent has averred in the plaint that the lease was a monthly lease, which could be terminated after giving 15 days notice expiring with the last day of tenancy month.

The Petitioner has filed her written statement. In the written statement, there is categorical admission in Para no. 2 that :

> "the defendant has taken on lease an open plot of land admeasuring 28’.25" x 60’ sq. ft. as described in this paragraph on lease by an Indenture of Lease dated 21.02.1972 on the Monthly rent of Rs.254/-"

The said admission is in regard to two facts, one is that the open plot was taken on lease and second is that the lease was monthly lease. Yet again similar admission is there in paragraph no. 4. At the conclusion of paragraph no. 4, there is an averment that the parties had agreed in the month of March 1997 that the defendant shall continue to be monthly tenant of the Plaintiff. In the proposed amendment, the defendant has averred that the tenancy is a yearly tenancy, it being for the manufacturing purpose and it is then stated that the leased property was not only an open plot of land but also structure was standing thereon. The purpose of said proposed amendment is obvious, in as much as Maharashtra Rent Control Act excludes open plots of land from the definition of premises contained in Section 7, Sub section 9 of the Act. With a view to seek protection of the Maharashtra

Rent Control Act, the present plea is sought to be raised.

3) The Trial Court has rejected the amendment application by holding that proposed amendment goes to withdraw an admission made in the written statement to the detriment of the interest of the plaintiff.

4) I have perused the impugned order. The defendant having once admitted that open plot of land was leased out, he cannot be permitted to withdraw the said admission by permitting a plea to be raised that the property leased was a structure. If the said amendment is to be permitted, it would go to enable the defendant to seek the protection under Maharashtra Rent Control Act.

5) Perused the order. The same does not call for any interference, hence Writ Petition is summarily dismissed.

(A.P. DESHPANDE, J.)